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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,127	06/15/2001	Assaf Govari	BIO-131	8639
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PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			SMITH, RUTH S	
			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/882,127
Filing Date: June 15, 2001
Appellant(s): GOVARI, ASSAF

Johnson & Johnson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 3, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1,2,4,6-23,25,27-43 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,280,222	von der Heide et al	1-1994
4,538,082	Hinke et al	8-1985
4,639,670	Normann	1-1987
4,247,601	Wiegand	1-1981
4,437,963	Yeoman	3-1984
6270591	Chiriac et al	8-2001
EP 0348557	Honkura et al	1-1990

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2, 4,7-11,21-23,25,28-32 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Appellant's admission of the prior art in view of von der Heide et al and Hinke et al or Normann. The Appellant discloses that it is well known in the art to provide a medical device with a position sensor where the position sensor can determine position and orientation coordinates. The Appellant further discloses that it is well known to provide a magnetic field sensor as the position sensor. An example of

such a sensor is disclosed by Appellant to be a Hall Effect sensor. Von der Heide et al disclose in column 1, that well known types of magnetoelectronic position sensors include Hall effect sensors and Wiegand effect sensors. Hinke et al disclose a Wiegand effect sensor which comprises a core made of a Wiegand effect material and a winding positioned around the core. The sensor is disclosed as being used as a position sensor (column 2, lines 31-35). Normann discloses a magnetic field sensor which comprises a core made of a Wiegand effect material and a winding positioned around the core. With respect to the size of the position sensor, it appears that the size would be an obvious design choice based upon the type of application and given the use of such with a medical device, the sizes as set forth in the claims would have been obvious in order to allow such a combination to be inserted into a patient. The use of a Wiegand effect sensor would inherently provide the accuracy as set forth in the claims in view of the materials used. It would have been obvious to one skilled in the art to have modified the prior art disclosed by the Appellant such that the position sensor used is a Wiegand effect sensor. Such a modification involves the substitution of one well known type of magnetoelectronic position sensor for another. Furthermore, it would have been obvious to have constructed the sensor such that it comprises a core having a winding positioned around the core. The use of such a sensor involves the selection of one well known type of Wiegand sensor.

Claims 6,12-18,20,27,33-39,41 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Appellant's admission of the prior art in view of von der Heide et al and Hinke et al or Normann as applied to claims 1,4,11,21,25,32 above, and further in view of Wiegand ('601). Wiegand discloses a Wiegand effect sensor having a core which comprises approximately 52% cobalt, 10% vanadium and 38% iron. The use of such materials will inherently result in the sensor having the properties as set forth in claims 5,6,20,26,27,41. It would have been obvious to one skilled in the art to have further modified the prior art disclosed by the Appellant such that the Wiegand sensor comprises the materials as disclosed by Wiegand ('601). The modification merely involving the selection of a known type of materials for the core in the sensor.

Claims 19,40 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Appellant's admission of the prior art in view of von der Heide et al and Hinke et al or Normann as applied to claims 9,30 above, and further in view of Yeoman. Yeoman discloses that it is known to provide a Wiegand sensing module comprising a core surrounded by a copper sensing winding (column 2, lines 21-25). It would have been obvious to one skilled in the art to have further modified the prior art disclosed by the Appellant such that the core is surrounded by a copper sensing winding as is well known in the art as taught by Yeoman.

Claims 21,25,28-32,41,42 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Appellant's admission of the prior art in view of Honkura et al. The Appellant discloses that it is well known in the art to provide a medical device with a position sensor where the position sensor can determine position and orientation coordinates. the Appellant further discloses that it is well known to provide a magnetic field sensor as the position sensor. Honkura et al disclose the use of a copper, nickel, iron alloy as the material for a magnetic sensor. It would have been obvious to one skilled in the art to have modified the prior art disclosed by the Appellant such that the material used in the magnetic field sensor is a copper, nickel, iron alloy. Such a modification merely involves the substitution of one known type of material used in a magnetic sensor for another. The use of a such a position sensor would inherently provide the accuracy as set forth in the claims in view of the materials used. With respect to claim 41, the materials used would inherently provide the results set forth. With respect to the size of the position sensor, it appears that the size would be an obvious design choice based upon the type of application and given the use of such with a medical device, the sizes as set forth in the claims would have been obvious in order to allow such a combination to be inserted into a patient.

Claims 21,25,28-32,41-43 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Appellant's admission of the prior art in view of Chiriack et al. The Appellant discloses that it is well known in the art to provide a medical device with a position sensor where the position sensor can determine position and orientation coordinates. The Appellant further discloses that it is well known to provide a magnetic

field sensor as the position sensor. Chiriac et al disclose the use of a copper, nickel, iron alloy or iron, chrome, cobalt as the material for a magnetic field sensor. It would have been obvious to one skilled in the art to have modified the prior art disclosed by the Appellant such that the material used in the magnetic field sensor is a copper, nickel, iron alloy or an iron, chrome, cobalt alloy. Such a modification merely involves the substitution of one known type of material used in a magnetic sensor for another. The use of such a position sensor would inherently provide the accuracy as set forth in the claims in view of the materials used. With respect to claim 41, the materials used would inherently provide the results set forth. With respect to the size of the position sensor, it appears that the size would be an obvious design choice based upon the type of application and given the use of such with a medical device, the sizes as set forth in the claims would have been obvious in order to allow such a combination to be inserted into a patient.

(11) Response to Argument

In response to the Appellant's argument that the prior art sensors cited are nonanalogous art, it has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the problem being dealt with pertains to determining position and orientation of an element. Therefore, one of ordinary skilled in the art would look at any type of position sensor in any type of environment in order to solve the problem. With respect to the accuracy of the sensor, the use of a Wiegand effect sensor would inherently provide the accuracy as set forth in the claims in view of the materials used. With respect to the size of the sensor, the sizes as set forth in the claims would have been obvious in order to allow such a combination to be inserted into a patient. It should be noted that the Appellant appears to merely argue that none of the references teaches the entire claimed invention. In response to the Appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of

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references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

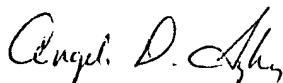


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June 20, 2005

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